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Chairman: Ms. WONG (New Zealand)
(Vice-Chairman)

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In the absence of Mr. Escovar-Salom (Venezuela), Ms. Wong (New Zealand), Vice-Chairman, took the Chair.

The meeting was called to order at 3.15 p.m.

AGENDA ITEM 148: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-NINTH SESSION (continued) (A/51/17 and A/51/154)

1. Mr. MUBARAK (Egypt) noted that the United Nations Commission on International Trade Law (UNCITRAL) had approved the Notes on Organizing Arbitral Proceedings and had requested the secretariat to edit the final text of the Notes as a separate publication, once the use of terms had been aligned with other texts of the Commission, in particular the UNCITRAL Arbitration Rules and the UNCITRAL Model Law on International Commercial Arbitration. He supported the approval of the Notes, which would promote the development of arbitral proceedings in general and international arbitration in particular, especially in cases where the parties had different legal systems. The Notes should be of a general nature so that they could be used in both public and private arbitration. Moreover, they should not affect the flexibility of arbitral proceedings in any way.

2. UNCITRAL was also to be commended for having adopted the Model Law on Electronic Commerce four years after initiating its work in that area. The Model Law would be accompanied by a Guide to Enactment, which would assist States in enhancing their legislation and enacting rules for the use of electronic means of communication, without imposing their use, since there were many countries whose legislation did not allow the formation of contracts by electronic means. The Model Law was not intended to alter the rules on paper-based commercial transactions. Moreover, the scope of application of the Model Law should be limited to business documents. Nevertheless, the Sixth Committee should focus not on specific areas of trade law, but on the general provisions in Part One of the Model Law, as that would enable States to harmonize their legislation in a flexible manner.

3. UNCITRAL had accomplished an important task by organizing more than 10 regional seminars as part of its training and technical assistance activities. In that connection, the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL established at the previous session was exceedingly valuable for training purposes. He concurred with the Commission's request that the Sixth Committee should recommend to the General Assembly the adoption of a resolution including that Fund and the UNCITRAL Trust Fund for Symposia in the agenda of the United Nations Pledging Conference for Development Activities.

4. Ms. LEHTO (Finland), speaking on behalf of the Nordic countries, welcomed the adoption of the UNCITRAL Model Law on Electronic Commerce, which was designed to facilitate the use of electronic media in business communications. The legal status of electronic documents varied from one legal system to another. In some, the status of electronic documents was almost equal to that of paper-based documents, whereas in others the legal situation was uncertain. It was to be hoped that, once its principles had been widely adopted, the Model Law would help to remove obstacles to electronic data interchange in

international business communications and to facilitate transactions. She also noted with satisfaction the approval of the UNCITRAL Notes on Organizing Arbitral Proceedings. The non-binding text of the Notes would be particularly useful for parties with different legal systems and would promote the use of international arbitration.

5. It was to be hoped that the legal obstacles to the international use of assignment of claims could be avoided in the future with the help of the uniform rules on assignment in receivables financing. Such rules would have a major impact on international financial markets. The ongoing work on the draft model provisions on cross-border insolvency was also of global economic importance, although significant steps had already been taken in that field at the regional level.

6. The Nordic countries reaffirmed their support for the Commission's valuable work, and for its realistic and well-balanced programme of work, which would benefit different sectors of international business and contribute to cooperation among States.

7. Mr. TRAUTTMANSDORFF (Austria) said that in a large bureaucracy like the United Nations Secretariat, sizeable units often developed their own dynamic, which did not necessarily ensure the most efficient use of scarce resources. On the other hand, smaller units, particularly those which were under close scrutiny by Member States and delegations, tended to utilize such resources more efficiently, as was true of the UNCITRAL secretariat. Nevertheless, that body could not continue to function efficiently if staff cuts prevented it from coping with its workload; it should bring that danger to the attention of delegations. The Commission's goal of harmonizing trade law on the basis of model rules, such as the UNCITRAL Notes on Organizing Arbitral Proceedings and other non-binding instruments, required its secretariat to disseminate information and advice on a broad scale. While there was no doubt that the secretariat could and should make use of outside resources, such a method also had its limits; accordingly, Member States should ensure that the secretariat had sufficient staff to carry out its additional tasks.

8. His delegation attached great importance to information regarding case law on UNCITRAL texts (CLOUT) and therefore appreciated the publication of the two additional sets of abstracts with court decisions and arbitral awards relating to the United Nations Convention on Contracts for the International Sale of Goods and the UNCITRAL Model Law on International Commercial Arbitration. The National Correspondents cooperated closely with the secretariat in providing important services to the international community in that specific field. Moreover, the increase in electronic data interchange, including via the Internet, could facilitate the work of the secretariat in providing Member States, upon request, with information in the required language versions. Nevertheless, the use of electronic means of communication should not be deemed to obviate the need for additional resources, a need created by the increased use of the services to be provided by the secretariat in connection with CLOUT.

9. As to the Commission's training and technical assistance activities, he noted with regret the lack of resources in that area, particularly for activities to increase the participation of experts from developing countries

and provide technical assistance in the field of trade law to those countries. As a result, the Commission and the Secretariat would have to take an inventive approach, particularly concerning use of extrabudgetary resources and cooperation with bodies outside UNCITRAL. He supported the Commission's request to the Sixth Committee that it should recommend to the Assembly the adoption of a resolution enabling the UNCITRAL Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL to be placed on the agenda of the United Nations Pledging Conference for Development Activities.

10. His delegation welcomed the finalization by UNCITRAL of the Notes on Organizing Arbitral Proceedings. He reiterated his delegation's support for the principles underlying the drafting of the Notes, particularly the principle that the letter should in no way affect the flexibility of arbitral proceedings. He hoped that the Notes would lead to gradual harmonization of disparate legal practices in the field of arbitral proceedings, without imposing a strict "corset" which would be adopted by only a few States.

11. His delegation also welcomed the adoption by UNCITRAL of the Model Law on Electronic Commerce. There could be no doubt that the Model Law would contribute substantially to promoting harmonization of the different legal systems governing business carried out by electronic means. His delegation was also grateful that the Commission had requested the Secretariat to produce a final version of the Guide to Enactment of the Model Law. His delegation was ready to play a coordinating role in respect of the resolution to be adopted by the General Assembly. In that resolution, the Assembly could recommend that States should take the Model Law and the Guide into account when enacting or revising their legislation.

12. Mr. ZHANG Kening (China) commended the Commission's efforts to unify national trade law and overcome legal obstacles to the flow of international trade. In particular, he noted the adoption of the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Notes on Organizing Arbitral Proceedings, as well as the consideration given to build-operate-transfer (BOT) projects, receivables financing and cross-border insolvency.

13. The situation concerning the participation of developing countries in the Commission's work was currently unsatisfactory. He hoped that favourable conditions could be created to facilitate such participation and that the developed countries would make contributions for that purpose. Furthermore, in order to attract developing countries, the Commission's agenda should include items such as BOT projects, which affected the vital interests of those countries. The Commission should also pay more attention to coordinating its activities with those of other organizations so as to avoid repetition and overlapping.

14. With the continuous development of international trade law, the Commission's work was becoming increasingly important. The United Nations and interested countries should strive to increase the Commission's human, material and financial resources.

15. Mr. GIROUX (Canada) said that the adoption of the UNCITRAL Notes on Organizing Arbitral Proceedings marked a further step in the development of a uniform approach to arbitration. Consultations in Canada had indicated that the document had produced considerable interest, and he hoped that the final version would soon be available. He also commended the Commission for its adoption of the Model Law on Electronic Commerce, which was very timely for the establishment of a uniform legal framework in that area. Consultations were being held in Canada to examine implementation of the Model Law's provisions, and he encouraged other States to consider adopting legislation based on it. His delegation hoped that the Sixth Committee would recommend that the General Assembly should adopt a resolution to that effect. Information technology generally and electronic commerce in particular were of great interest to Canada, and his delegation looked forward to participating actively in future work on digital signatures and certification authorities.

16. He hoped that the Working Group on Insolvency Law could complete its work on cross-border insolvency for consideration by the Commission at its thirtieth session. In that respect, collaboration between the Commission and the International Association of Insolvency Practitioners (INSOL) had been fruitful. The Commission should also be encouraged in its cooperation with other bodies, particularly the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) with respect to the work being done on the receivables financing.

17. Mr. NAGY (Hungary) said that Hungary had from the beginning supported efforts aimed at the elaboration of the UNCITRAL Notes on Organizing Arbitral Proceedings, which were of particular practical importance. His delegation noted with satisfaction that the twelfth International Arbitration Congress had been actively involved in that task; as a member of UNCITRAL, Hungary was ready to contribute further to harmonizing the principles of commercial arbitration.

18. The Commission had achieved the first significant results concerning the use of electronic messages in commercial negotiations, and his delegation supported the recommendation that all States should give favourable consideration to the UNCITRAL Model Law on Electronic Commerce, since in the current global age, the use of electronic media had such importance in international trade that it was essential that there should be reliable and binding rules. In particular, the second part of the Model Law touched on the sensitive issue of electronic transport documents.

19. He shared the opinion of other delegations that the Commission's report failed to mention one of the most important issues: the abandonment of the idea of transferring the headquarters of UNCITRAL from Vienna to New York. Hungary welcomed that decision, since Austria was an excellent host and the relocation would also have had a number of disadvantages.

20. Concerning future work, it was his delegation's understanding that the Commission would concentrate on the following questions: digital signatures and certification authorities; the legal basis supporting certification processes, including emerging digital authentication and certification technology; the applicability of the certification process; the allocation of risk and liabilities of uses, providers and third parties in the context of the use of

certification techniques; the specific issues of certification through the use of registries; and incorporation by reference (A/51/17, para. 223).

21. Mr. KULYK (Ukraine) expressed appreciation for the adoption of the UNCITRAL Notes on Organizing Arbitral Proceedings and the UNCITRAL Model Law on Electronic Commerce, which were of considerable practical value and highly instructive. They would enable all States to implement their legislation in that field or to enact new legislation where none existed. The Commission should continue its work on the preparation of legal standards that would facilitate the predictability of electronic commerce, thereby enhancing trade in all regions.

22. His delegation noted with appreciation that the Commission had requested the Secretariat to prepare first draft chapters of a legislative guide to BOT projects. It was an issue of considerable interest to many States, especially those which were going through an intensive privatization and structural adjustment process.

23. He hoped that the Working Group on Insolvency Law would be able to submit a draft legislative text for consideration by the Commission at its thirtieth session. The progressive development of that subject would promote the universal handling of cross-border insolvencies which often involved a complex relationship between national laws, the principles of conflicts of laws and the recognition of foreign insolvency proceedings of each of the affected States.

24. Ukraine also attached great importance to activities to achieve wider implementation and dissemination of instruments elaborated by the Commission. In that connection, and bearing in mind the limited resources available, the Commission should cooperate closely with other international bodies and organizations engaged in international trade law, which would undoubtedly contribute to further unification and harmonization of norms in that field.

25. Mr. LEGAL (France) welcomed the decision that the Commission's headquarters should remain in Vienna, which recognized the advantages offered by its location in the Austrian capital, and at the same time confirmed the vital importance of the European pole of the United Nations system.

26. His delegation welcomed the adoption of the UNCITRAL Model Law on Electronic Commerce and the UNCITRAL Notes on Organizing Arbitral Proceedings. France had expressed reservations with respect to the drafting of the Notes, since it believed that flexibility was one of the main advantages of arbitral proceedings, and that concern had been addressed by the Commission. Nevertheless, his delegation would continue to monitor closely action regarding the three principles it had always supported, and which had been the basis for the drafting of the Notes, namely, that the Notes must not impinge upon the flexibility of the arbitral proceedings; that arbitrators should only be advised of the list of matters to be considered; and that the Notes should not express opinions on the rules of procedure to be followed in individual situations. With that reservation, the two texts could be adopted at the current session.

27. As far as the future work of the Commission was concerned, from a methodological and budgetary point of view, it would be advisable for the

Commission to give priority to topics already under consideration, namely, assignment in receivables financing, cross-border insolvency and the draft Guide to Enactment of the Model Law.

28. The terms of reference of the Working Group on Electronic Data Interchange should not be changed. Since there were many international conventions that dealt specifically with the liability of carriers, States that had still not done so should be urged to accede to or ratify such conventions. That same concern for realism and efficiency should guide the Commission in the area of BOT projects, with respect to which France had expressed serious reservations. In any case, the draft legislative guide to be prepared by the Secretariat should reflect the different existing legal systems. Issues relating to service providers and regulations governing their relations with users were among those that his delegation considered priorities.

29. He wished to stress his delegation's interest in the holding of regional seminars that allowed representatives of various countries, particularly developing countries, to receive training and to familiarize themselves with the methods of international trade law. Such activities should be financed through voluntary contributions to the UNCITRAL Trust Fund for Symposia and the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL. His country had been one of the few countries to make contributions to the two trust funds.

30. He regretted having to point out the delays in the publication of the French version and other language versions of the Commission's documents. While he was aware that such problems might be the result of budgetary restrictions imposed on the Organization as a whole, he nevertheless believed that they should be remedied in order not to hamper the work of the Commission and its working groups.

31. Mrs. FERNÁNDEZ DE GURMENDI (Argentina) said that the UNCITRAL Notes on Organizing Arbitral Proceedings adopted at the twenty-ninth session of the Commission constituted an important text which, without affecting the flexibility required in arbitral proceedings, would facilitate their predictability and orderly development. The Notes would be of great practical value for participants in arbitral proceedings, who often came from different legal backgrounds or had different expectations about such proceedings. The adoption of the Notes would facilitate the use of the other texts already prepared by UNCITRAL for the settlement of international trade disputes.

32. The adoption of the Model Law on Electronic Commerce brought to a close over 10 years of work by the Commission on the legal implications of the use of electronic communication in international trade. While the Model Law did not provide universal solutions, it was an essential first step towards resolving the legal problems that arose as a result of the increasing use of electronic mail and other modern alternatives to paper-based forms of communication in commercial transactions. Her delegation therefore supported the Commission's recommendation that States should give favourable consideration to the Model Law when adopting or amending their domestic legislation so as to promote the necessary legislative uniformity in that field. Bearing in mind current rapid

developments in technology, her delegation also endorsed the Commission's decision to continue working on the drafting of legal guidelines in that field.

33. The adoption of those instruments was yet another example of the efficiency of UNCITRAL, which had managed to avoid undue politicization of its debates and to maintain its high technical quality, producing texts that were extremely useful in facilitating international trade relations. She welcomed in particular the synergy achieved in UNCITRAL as a result of the work of government experts and the valuable contributions made by the Commission's secretariat. She hoped that the drastic changes and retrenchments being experienced by the Organization would not affect the indisputable quality of its work.

34. She agreed with the representative of Germany that the UNCITRAL Yearbook, the means through which the Commission's work was disseminated worldwide, should be continued. She also agreed that it was important to continue the compilation and analysis of court decisions and arbitral awards, or CLOUT system. It was important to provide adequate resources for the development of that system, which was designed to promote the uniform application of the legal texts that resulted from the Commission's work.

35. Lastly, it was important to maintain and promote the Commission's training and technical assistance programme by providing the UNCITRAL secretariat with sufficient human and financial resources for the UNCITRAL Trust Fund for Symposia. UNCITRAL texts were often related to areas that were highly complex and highly specialized. Therefore, in order to ensure their universal use, the Commission should make dissemination and technical training one of its priorities.

36. Mrs. FLORES (Mexico) expressed her delegation's concern that the documents for the deliberations of the Sixth Committee were issued so late. In order for the Committee to hold a genuine dialogue and to obtain positive results, documents must be available sufficiently in advance. When the budget for the 1996-1997 biennium had been adopted, the Secretariat had assured the General Assembly that conference services and therefore documentation would not be affected by the savings measures. She urged that an effort should be made to ensure that documents were available in accordance with the six-week distribution rule.

37. The adoption of the Notes on Organizing Arbitral Proceedings was a milestone in the commercial sphere. Over the years, arbitration had proved to be a valuable tool that facilitated the conclusion of a growing number of international contracts. The Notes would serve as a guide for the parties in commercial transactions and arbitration throughout the world and would help them to streamline arbitral proceedings and reduce their length and cost; they would doubtless promote recourse to arbitration even where a clause to that effect was not included in commercial contracts.

38. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was one of the most important instruments of international trade law. Her delegation believed that the Commission should periodically monitor its status and implementation and that States should focus greater attention on

both the convention and the other legal texts elaborated by UNCITRAL with a view to attaining the goal of uniformity in international trade law in the near future.

39. The adoption of the Model Law on Electronic Commerce and the Guide to Enactment of the Model Law bridged a huge gap in the world's current legal systems: electronic media, owing to their speed, their low cost, their security and their ability to process and transmit data, had become an essential instrument of trade and had facilitated the growth of domestic and international markets. It was therefore necessary to accelerate the publication and dissemination of the Law and the Guide as much as possible, so that the various States could take them into account in adapting their laws to contemporary reality. She also noted the importance of the second section of the Model Law on the use of electronic media in the international carriage of goods, which would help to remove obstacles in that area of trade and facilitate documentary credit operations.

40. The problems caused by cross-border insolvency, which were reflected in the rising cost of credit on the international markets, made it necessary to redouble efforts to reduce and eliminate the risks of recovering loans on enterprises with cash-flow problems. Greater cooperation and coordination between national courts in cases of cross-border insolvency should accrue to the benefit of trade and, thus, of States.

41. The work of the Commission on that subject, on the BOT projects and on assignment in receivables financing was of interest to her delegation. She therefore urged the Commission to step up its work in those areas. She also noted with satisfaction the continued growth and expansion of the system of correspondents on case law on UNCITRAL texts (CLOUT) and the continued publication of the CLOUT text.

42. Mr. SMEJKAL (Czech Republic) said that, although the Czech Republic was not currently a member of UNCITRAL, it followed the work of the Commission with interest and was constantly considering becoming a party to the various UNCITRAL conventions and agreements. Accordingly, in 1995, it had ratified the United Nations Convention on the Carriage of Goods by Sea of 1978 (Hamburg Rules), one of the most important texts elaborated by the Commission.

43. The adoption that year of the UNCITRAL Model Law on Electronic Commerce was a particularly welcome development. The Model Law had ultimately been adopted with an amended title, which his delegation found appropriate, even though it might be the cause of misunderstandings as to the limits of the text's sphere of application. Article 1 of the Model Law, however, was sufficiently explicit in that regard and doubtless covered the possibility of extending the sphere of application beyond strictly commercial activities.

44. Concerning the content of the Model Law, his delegation believed that the decision to include the provisions on the carriage of goods directly in the Law itself, and not in an annex, was appropriate. Including them as the first chapter of a special second section of the Model Law had given the text an open structure to which specific new provisions that would constitute supplementary

chapters of the second section could be added in future, if necessary. That also avoided uncertainty about the nature of the rules on the carriage of goods.

45. States should now refer to the Model Law in adopting their domestic legislation on the use of electronic media for the exchange of information in contractual relations and, in general, attempt to harmonize the relevant rules of their domestic legislation with the provisions of the Model Law with a view to promoting the uniformity of applicable national law in that area. In order to carry out that difficult task, States should refer to the Guide for Enactment of the Model Law prepared by the Secretariat. It probably would have been better if the Guide had been elaborated and adopted by the Commission, but the solution adopted for lack of time was clearly preferable to the only other alternative, which would have been to defer the adoption of the Model Law itself. In any case, the difficulty had been reduced because the report of the Commission clearly indicated - in addition to the question of the new structure of the text of the Model Law - the main points requiring additional explanation with regard to the content of the Guide as it had been submitted at the most recent session of the Commission.

46. His delegation noted with satisfaction the Commission's adoption of the Notes on Organizing Arbitral Proceedings. With the amendments introduced to the text after the most recent session, the necessary flexibility of international arbitral proceedings had been preserved. The text that had been adopted clearly highlighted their non-binding and optional, rather than their strictly supplementary, character, for it merely made various options and solutions available to the parties, thereby appropriately safeguarding their flexibility and contractual freedom. Under those conditions, the text that had been adopted could become a valuable instrument for those engaged in international commercial arbitration.

47. In view of the limited resources available to the Commission, it should focus in its future work on priority issues, one of which was doubtless the finalization of the draft text on cross-border insolvency during the next two sessions of the Working Group on Insolvency Law. The Commission would thus have time to consider the text at its thirtieth session, scheduled for May 1997. Moreover, in deciding the future direction of the work of the Commission, a special effort would have to be made to avoid duplication of projects that could be carried out by other institutions, such as the Economic Commission for Europe, UNCTAD, UNIDROIT, the Hague Conference or IMO, but also bearing in mind the past experience of UNCITRAL itself. In that connection, she supported the view expressed by the Commission in paragraphs 210 to 224 of its report (A/51/17).

48. Mr. DANIELL (South Africa) said that, with the reform efforts currently under way in the United Nations, his country wished to express its full support for the continued mandate of UNCITRAL as the core legal body of the United Nations system in the field of the progressive harmonization and unification of international trade law.

49. His delegation was satisfied to note that the Commission had approved the UNCITRAL Notes on Organizing Arbitral Proceedings. Although the Notes were of a non-binding character, they should greatly assist both the local and

international practitioner in preparing for and organizing arbitral proceedings, especially in international arbitrations where the participants might have different legal backgrounds and expectations relating to the conduct of business. Since the Notes dealt with complex matters such as documentary evidence, hearings, witnesses and settlement negotiations, they could greatly enhance the predictability of arbitrations and save time and costs.

50. The Commission's approval of a Model Law on Electronic Commerce had filled the lacuna resulting from the rapid development of electronic data interchange as a method of conducting international trade. The Model Law could remedy the disadvantages faced by many countries as a result of their lack of adequate domestic legislation in that area. The adoption of the Guide to Enactment of the Model Law was also to be welcomed, as it could assist States wishing to enact legislation based on the Model Law. Moreover, the Guide would be useful for users of electronic means of communication as well as scholars on the subject. The adoption of the Model Law was particularly timely for South Africa, as the South African Law Commission had recently referred the question of computer evidence and related matters for consideration by the appropriate judicial body. No doubt the Model Law and Guide would be extensively consulted in order to enable South Africa to keep abreast of developing trends in that field.

51. South Africa had participated and would continue to participate actively in the working group sessions on cross-border insolvency. His delegation hoped that the working group would complete its work at it forthcoming meetings, so that the draft legislative provisions on judicial cooperation, access and recognition in cases of cross-border insolvency could be considered at the Commission's thirtieth session. A committee of the South African Law Commission was currently undertaking a review of the insolvency law in South Africa, and the draft provisions would doubtless greatly assist in the possible enactment of specific legislation on judicial cooperation, access and recognition in such cases.

52. With regard to the Commission's future work, he said that the question of digital signatures should be placed on the Commission's agenda, in view of their growing use in international commerce. The Commission should also continue its work on build-operate-transfer (BOT) projects on the basis of a review of possible issues on which legislative guidance might be useful, and of the preparation of a preliminary draft guide on the topic. He further noted that work was continuing on the topic of receivables financing and looked forward to the working group's report in that regard.

53. His delegation was pleased to announce that sections A and B of the questionnaire on the legislative implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards had largely been completed, and section C on procedural rules was expected to be finished before the end of the year. His delegation looked forward to the publication of the questionnaire's findings in the near future.

54. The question of technical assistance and training in the areas of commerce and trade law was of great importance, and his delegation was therefore pleased to see that seminars and briefing sessions for government officials and other

players had been held in many parts of the world during the past year. Such activities were to be encouraged, since they could greatly assist in the acquisition of necessary expertise in the field of international trade law. Moreover, they should be expanded, if possible, to include other developing countries that had not yet benefited from such seminars. As funding would be the main obstacle to the further holding of such workshops, South Africa was very much in favour of the Sixth Committee's recommending that the General Assembly adopt a resolution by which the UNCITRAL Trust Fund for Symposia and the trust fund for travel assistance to developing countries members of the Commission would be included in the agenda of the United Nations Pledging Conference for Development Activities.

55. Finally, his delegation urged the continued release of a number of UNCITRAL publications. The Yearbook and the bibliography of recent writings related to the work of UNCITRAL were of great assistance to legislators, academics and other professionals. In addition, the various handbooks containing conventions and model laws adopted by UNCITRAL were very useful.

56. Mr. TARASSENKO (Russian Federation) said that it was important that as many Member States as possible should adhere to the Convention on Independent Guarantees and Stand-by Letters of Credit, concluded the previous year by UNCITRAL.

57. One of the great successes of the work completed by UNCITRAL during the current year had been the approval of the Notes on Organizing Arbitral Proceedings, designed to promote the effective implementation of the UNCITRAL Arbitration Rules and the UNCITRAL Model Law on International Commercial Arbitration. In particular, the Notes would allow countries with economies in transition to make up for their technical, organizational and procedural deficiencies in the area of international commercial arbitration.

58. Another outstanding accomplishment of the Commission's twenty-ninth session had been the adoption of the Model Law on Electronic Commerce and the formulation of the draft Guide to Enactment of the Model Law, which had laid the groundwork for raising international commercial activity to a totally new technical level.

59. Moreover, it was very important that the work of preparing a legislative guide on BOT projects should continue. The Russian Federation urgently needed to create a climate favouring investments, and therefore to conclude project execution contracts that offered legal guarantees for investment activities in the area of infrastructure development.

60. His delegation welcomed the Commission's activities in the area of technical assistance and training, and above all its contribution to the formulation of draft legislation at the national level, as it was important to ensure that national legislation abided by the conventions, model laws and other juridical instruments of international trade law, especially in the cases of countries in the process of reforming their legislation with a view to quickly joining the world market economy. In that regard, newly independent States should accede as early as possible to the Commission's basic international conventions, and the UNCITRAL secretariat should keep the States Members of the

United Nations informed as to the status of the principal legal texts it was formulating.

61. Finally, the Russian Federation felt that it was more important than ever for UNCITRAL to avoid duplication of work and waste of resources, and to make the most of its capacities for the good of the entire world community.

62. Mr. EFFENDI (Indonesia) noted with satisfaction the Commission's adoption of the Notes on Organizing Arbitral Proceedings, which would be extremely beneficial for developing countries. At the same time, the adoption of the Notes should not lead to an undervaluation of current arbitral practices. The Notes should not affect the flexibility of arbitral procedures, exceed the requirements of applicable laws, regulations and practices, or serve as a pretext for refusing to enforce an arbitral award.

63. He welcomed the adoption of the UNCITRAL Model Law on Electronic Commerce, which addressed issues related to the increasingly computerized trade environment that were particularly important for developing countries. On the question of future work with respect to electronic commerce, he noted with satisfaction that UNCITRAL had given its Working Group on Electronic Commerce a mandate to prepare a background study of the issues of digital signatures and service providers. He also supported the Commission's decision to rename its Working Group on Electronic Data Interchange "Working Group on Electronic Commerce".

64. Turning to the report on build-operate-transfer projects (BOT) prepared by the UNCITRAL secretariat, he expressed the view that since such projects involved major expenditures for States, foreign investors and contractors, the codification of rules and guidelines in that area would be particularly beneficial for developing countries; such projects would increase savings substantially, thus enabling States to invest in infrastructure. That, however, would require a legal framework governing BOT projects, and UNCITRAL could contribute to that effort by updating and codifying national BOT legislation.

65. He noted with interest the efforts to prepare draft model provisions on cross-border insolvency, and expressed satisfaction with the UNCITRAL training and technical assistance programme, funded by voluntary contributions, which had proved highly useful to developing countries. The States members of the Association of South-East Asian Nations (ASEAN) were deeply committed to creating a favourable economic climate for increased trade and investment in their region. In that context, UNCITRAL played an essential role, particularly because of its ability to adapt to the current international situation and to promote the acceptance of legal instruments.

66. Ms. BARRETT (United Kingdom) said that UNCITRAL was the core legal body within the United Nations in the field of international trade law and that its position should be reaffirmed by the General Assembly.

67. While her delegation had not opposed the Commission's adoption at its twenty-ninth session of the Model Law on Electronic Commerce, she regretted that there had been insufficient time in which to perfect the text, particularly the provisions concerning transport documents. Nevertheless, she endorsed the

Commission's recommendation that the text of the Model Law should be transmitted to Governments for their consideration when they enacted or revised laws governing electronic commerce.

68. She noted with satisfaction that UNCITRAL had finalized the text of the Notes on Organizing Arbitral Proceedings and trusted that the Notes would be well publicized. In that context, she informed the members of the Committee that the United Kingdom Parliament had recently enacted a new arbitration law which incorporated much of the substance and spirit of the UNCITRAL Model Law on International Commercial Arbitration.

69. She noted with satisfaction that work on BOT projects was moving forward and that the Working Groups dealing with assignment in receivables financing and cross-border insolvency were making good progress.

70. With regard to future work, she supported the cautious approach which UNCITRAL had adopted concerning a further review of laws in the area of the international carriage of goods by sea; it was of critical importance to be guided by the industry in determining whether problems needed to be addressed in that area. Lastly, she looked forward to participating in further work on electronic commerce and awaited with interest the study being prepared by the UNCITRAL secretariat on digital signatures and service providers.

71. Mr. POLITI (Italy) stressed the importance of the adoption of the UNCITRAL Notes on Organizing Arbitral Proceedings, which would be extremely useful in promoting recourse to arbitration for the resolution of international commercial disputes, and would assist practitioners in arbitral proceedings. As noted by the Chairman of UNCITRAL, the Notes would not affect the necessary flexibility of arbitral procedures or establish legal requirements beyond the applicable law.

72. Of equal importance was the adoption of the Model Law on Electronic Commerce, which would greatly facilitate electronic data interchange in international trade. It would also assist States in formulating or enhancing their legislation governing alternatives to paper-based forms of communication and information storage. He looked forward to the finalization by the UNCITRAL secretariat of the Guide to Enactment of the Model Law, and agreed that the Working Group on Electronic Commerce should elaborate uniform rules on digital signatures and service providers on the basis of a background study prepared by the UNCITRAL secretariat.

73. He welcomed the progress made by the Working Groups entrusted with preparing uniform rules on assignment in receivables financing and cross-border insolvency and was confident that the work would be completed promptly. He also attached great importance to the work being done on the legislative implementation of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Lastly, he welcomed the progress made in the operation of CLOUT and expressed appreciation for the Commission's continuing activity in the field of training and technical assistance.

74. Ms. BOUM (Cameroon) noted that UNCITRAL had completed its work on the draft Notes on Organizing Arbitral Proceedings and the draft Model Law on Electronic Commerce at its twenty-ninth session. She welcomed the non-binding nature of the Model Law, which meant that it would not be prejudicial to users of traditional means of communication and information storage, who could use it as a basis for updating their national legislation. She trusted that the Notes would help to expedite and increase the efficiency of arbitral proceedings by avoiding unnecessary conflicts.

75. With regard to the future work of UNCITRAL, she welcomed the decision not to include a review of current practices and laws in the area of the international carriage of goods by sea in the agenda. She concurred with the objections raised on that subject and believed, in particular, that any review of the liability regime in the area of the international carriage of goods by sea would only increase the current confusion, in an area in which three regimes already coexisted, and was likely to discourage States from adhering to the Hamburg Rules. In general, the future work of UNCITRAL should be focused on eliminating the obstacles to the full participation of developing countries in international trade.

76. She noted with satisfaction that the UNCITRAL secretariat had been able to improve the operation of the CLOUT system and that it was continuing to carry out its training and technical assistance programme, which was highly beneficial to developing countries. Lastly, she supported the Commission's proposal that the Sixth Committee should recommend to the General Assembly the adoption of a resolution including the UNCITRAL Trust Fund for Symposia in the agenda of the United Nations Pledging Conference for Development Activities, a step that would make it possible to defray a portion of the travel costs of developing country representatives.

77. Mr. Myung Chul HAHM (Republic of Korea) said that during the past decade, the volume of international trade had increased sharply, owing mainly to the rapid development of communications technology and transport. However, international trade was insufficiently regulated by conventional legal means. For example, whenever a multinational corporation declared itself insolvent, chaos prevailed. The same could be said, unfortunately, of electronic commerce, since current legislation prescribed the use of paper documents. His delegation therefore noted with satisfaction the work being done by UNCITRAL to tackle issues such as cross-border insolvency, electronic commerce, build-operate-transfer projects and receivables financing.

78. The Republic of Korea was rapidly approaching the status of tenth largest trading nation in the world, and as such had a keen interest in the development and implementation of international trade law. To that end, his Government would continue to be an active participant in the activities of UNCITRAL.

79. The Committee was well aware that the rules of commerce were ultimately forged by the customs and traditions of each society. Reform could not therefore be instantaneous, since it was a goal which had to be pursued with both patience and perseverance. It was clear that some delegations would be more forthcoming in their support for new rules, while others would tend to be more conservative. It was therefore necessary to achieve consensus in UNCITRAL

without sacrificing the indispensable economic development efforts of certain Member States for the sake of uniformity in international law. At the same time UNCITRAL should not simply be content to note the existence of differences among States.

80. His delegation welcomed the Commission's work in respect of training and technical assistance, since such activities could dispel the hesitations of certain States regarding the potentially destabilizing effects on their economies of adopting new regulations.

81. Mr. GRAY (Australia) said that because UNCITRAL represented the world's various geographical regions and its principal economic and legal systems, it was a very valuable forum for facilitating international commercial transactions by harmonizing trade laws. That prime function was vitally important in helping to improve the performance of the global economy. In that respect, UNCITRAL had continued to participate in initiatives supported by his Government with a view to promoting harmonization of international trade law instruments in the Asia-Pacific region. In August 1996 UNCITRAL had participated in a symposium organized by Australia and Viet Nam regarding legal development towards a socialist-oriented market economy.

82. The Commission's work was particularly evident, for example, in the adoption of the Notes on Organizing Arbitral Proceedings. His Government commended the adopted Notes, since they would be extremely useful in planning and carrying out arbitrations. The adoption of the UNCITRAL Model Law on Electronic Commerce was another especially important achievement. The Model Law would help to overcome traditional geographical, language and cultural barriers to international trade, thereby enabling commercial transactions to be performed with greater speed and efficiency. In addition, the Model Law would help his Government to make use of information technology while considering the legal implications thereof.

83. His delegation noted with satisfaction the Commission's work on transport law, especially the impact of the growing use of electronic means of communication in the carriage of goods. With regard to training and technical assistance, UNCITRAL had initiated an ambitious programme of assistance to various countries.

84. His delegation also wished to stress the importance of the Commission's work regarding case law on UNCITRAL texts (CLOUT). As the collection of abstracts of court decisions and arbitral awards grew, developments in international law could be more easily monitored and information on the texts more widely disseminated. In addition, the ready availability of information in that field would help to harmonize international trade law.

85. An international trade law conference would be held in Australia early in 1997. Developments in international trade law would be discussed, including the work of UNCITRAL. It was hoped that the conference would promote interest in the Commission's work.

86. His delegation had noted the reduction in staff numbers in the UNCITRAL secretariat, which was a result of the overall reduction of staffing levels

within the United Nations. It was hoped, however, that UNCITRAL would continue to give priority to promoting its texts and executing ongoing projects.

87. Mr. SYARGEEU (Belarus) said that his delegation welcomed the UNCITRAL Model Law on Electronic Commerce, which was an important step in bringing about greater harmonization of international trade law.

88. His Government had prepared a draft law on the basis of the UNCITRAL Model Law on International Commercial Arbitration. His delegation welcomed the adoption of the UNCITRAL Notes on Organizing Arbitral Proceedings. Those two instruments would ensure greater predictability and streamlining of international trade. At the same time, and bearing in mind the current situation, the flexibility of the existing arbitration system should not be compromised.

89. His Government was currently studying the Convention on the Limitation Period in the International Sale of Goods, the United Nations Convention on the Carriage of Goods by Sea, the United Nations Convention on the Settlement of Certain Conflicts of Laws in connection with Bills of Exchange and Promissory Notes, and the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

90. His Government attached great importance to the Commission's work in the field of training and technical assistance and reaffirmed the need to hold seminars and symposia, especially at the regional level. Representatives from countries with economies in transition should be allowed to participate in such events. His Government endorsed the Commission's call for States, international organizations and other interested bodies to consider making contributions to the UNCITRAL Trust Fund for Symposia in order to satisfy the growing demand from developing countries and newly independent States for training and technical assistance.

91. The Sixth Committee should recommend that the General Assembly adopt a resolution by which the UNCITRAL Trust Fund for Symposia and the trust fund for providing travel assistance for developing countries members of UNCITRAL would be included in the agenda of the United Nations Pledging Conference for Development Activities.

92. In November 1995 the UNCITRAL secretariat had sent a note verbale to States parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards containing a questionnaire designed to elicit information on the implementation of the said Convention. His Government had already submitted its reply and was interested to learn the final outcome; his delegation urged States which had still not replied to do so as quickly as possible.

93. Regarding the Commission's future work, his delegation believed that the time was right to study uniform legislative actions regarding judicial cooperation in cases of cross-border insolvency; his delegation hoped that the relevant draft could be submitted to UNCITRAL at its thirtieth session.

94. Mr. THAHIM (Pakistan) said that the UNCITRAL Model Law on Electronic Commerce was particularly relevant given the growing need of Member States to enact legislation in that area. The work of the Commission would be of great help in focusing the attention of Member States on new aspects of international commerce and transactions, such as electronic data interchange (EDI), electronic commerce using computers, the Internet, digital signatures and transmission of bills of lading by electronic means.

95. States which were not members of UNCITRAL should be given an opportunity to associate themselves with the Commission's work and to make an effective contribution to the elaboration of the Model Law. Accordingly, it should be clearly indicated in the Committee's recommendation to the General Assembly that, since electronic commerce was a new phenomenon, the Model Law and other recommendations of the Commission should be transmitted to Member States for comment before being recommended by the General Assembly for adoption.

96. Ms. EKEMEZIE (Nigeria) expressed satisfaction at the adoption of the UNCITRAL Model Law on Electronic Commerce, which would, no doubt, further enhance the flow of international trade. She commended, in particular, the pragmatic nature of the Model Law and the recognition of paper-based documents. Another important accomplishment was the adoption of the UNCITRAL draft Notes on Organizing Arbitral Proceedings, which would be a useful guide to practitioners in the field.

97. Her delegation noted with satisfaction the progress made in the area of training and technical assistance, since developing countries were the primary beneficiaries, and expressed appreciation to the countries which had contributed to the UNCITRAL Trust Fund for Symposia. It urged that every effort be made to keep open the financial supply lines to UNCITRAL. Her delegation therefore supported the inclusion of the Trust Fund among the funds covered by the United Nations Pledging Conference for Development Activities.

98. Turning to the remaining items considered by the Commission, her delegation highlighted the progress made on build-operate-transfer (BOT) projects, cross-border insolvency, and assignment in receivables financing. It was to be hoped that the working groups and the Commission would be able to conclude their work on those topics in the near future.

99. Mr. RAMA RAO (India) said that, in the view of his delegation, the highlight of the work of UNCITRAL at its twenty-ninth session had been the adoption of the Model Law on Electronic Commerce, the purpose of which was to assist States in modernizing their legislation to accommodate the increasing use of electronic data interchange in trade transactions. Existing laws tended to govern only "paper-based commerce", and they either prevented the use of electronic data interchange or left transactions conducted electronically in a state of legal uncertainty. The Model Law would remedy that situation.

100. Given the fact that electronic data interchange was a new phenomenon, the rules governing it should be flexible so as to deal with unforeseen contingencies and technological advances. In its future work, the Commission should continue to focus on new developments such as digital signatures and service providers, including the issue of incorporation by reference, and should

strive to find acceptable ways to fill existing legal gaps with regard to modern electronic communication and provide adequate safeguards for that new area of international trade law.

101. His country had recently taken important legislative and administrative measures to give effect to the work of UNCITRAL in the area of international commercial arbitration. In keeping with the globalization of India's economy, growing foreign investment in India and the country's commitment to the speedy resolution of international commercial disputes, India had passed the Arbitration and Conciliation Ordinance in January 1996. The Ordinance was a comprehensive legal instrument which consolidated and amended the existing legal provisions relating to domestic and international commercial arbitration and enforcement of foreign arbitral awards, and it also defined the law governing conciliation and other related matters. The Ordinance was patterned on the UNCITRAL Model Law on International Commercial Arbitration and on the UNCITRAL Conciliation Rules. In addition, an International Centre for Alternative Dispute Resolution had been established for the purpose of promoting alternative dispute resolution systems relating to arbitration and conciliation. The Centre conducted actual dispute resolution procedures and engaged in research and training relating to alternative dispute resolution systems.

102. Mrs. PIAGGI de VANOSSI (Chairman of the United Nations Commission on International Trade Law) said that she was especially encouraged to note the support expressed by delegations for the latest progress made by UNCITRAL, such as the Notes on Organizing Arbitral Proceedings and the Model Law on Electronic Commerce, and for the Commission's future work. She did not find surprising that delegations should attach special importance to work on BOT projects and assignment in receivables financing, given that they offer opportunities for facilitating financing and borrowing projects. Also important was the project on cross-border insolvency and the work carried out in the field of electronic data interchange. Many representatives had referred to the useful contribution of the CLOUT system and the abstracts of court decisions and arbitral awards.

103. She had listened with the greatest of interest to the comments made by the various representatives and wished to assure them that the concerns they had expressed would be taken into account. For example, attention had been drawn to the need to avoid duplication in the unification of international commercial law. In that connection, she wished to remind delegations that UNCITRAL was the legal organ of the United Nations system which dealt with the unification of international commercial law.

104. She also wished to point out that she shared the view that there was a need for more seminars and technical assistance programmes relating to legislation, especially for developing countries. In that connection, it was unfortunate and objectionable that, even though the need to increase the human resources at the disposal of UNCITRAL had been recognized, those resources were currently being subjected to greater restrictions, which could seriously affect the activities of the Commission and do irreparable harm to the work of its secretariat. In her opinion, it was necessary to be realistic. Owing to the lack of financial assistance for the travel of secretariat staff, it was virtually impossible to conduct seminars. She appealed to States that were able to contribute to the Trust Fund for Symposia to do so. In addition, she wished to point out that the

UNCITRAL Trust Fund for travel assistance was being used to assist representatives of developing countries who would otherwise not be able to participate in the sessions of the Commission or the deliberations of its working groups. That was of particular importance in view of the need, which had been emphasized by many representatives, for developing countries to participate fully and on an equal footing in the progressive harmonization of international commercial law. In that connection, she gave assurances that the Commission would attach the highest importance to universal and balanced representation.

The meeting rose at 6.10 p.m.